

SENATE BILL 379

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E1

2001 Regular Session
11r2058
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By: **Senator Baker**

Introduced and read first time: February 2, 2001

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Fraud - Telecommunication Service Providers**

3 FOR the purpose of prohibiting use, possession, manufacture, assembly, transfer,
4 distribution, advertising, and related activities relating to certain unlawful
5 telecommunication devices, unlawful access devices, and related plans and
6 materials; providing criminal penalties, damages, injunction, impounding,
7 forfeiture, and other enforcement measures for violations of this Act;
8 authorizing a civil cause of action for violations of this Act; providing certain
9 rules of construction and venue for prosecution of violations of this Act;
10 providing certain exceptions; defining certain terms; and generally relating to
11 telecommunication services and unlawful access.

12 BY adding to

13 Article 27 - Crimes and Punishments

14 Section 194A to be under the new subheading "Fraud - Telecommunication
15 Service Providers"

16 Annotated Code of Maryland

17 (1996 Replacement Volume and 2000 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article 27 - Crimes and Punishments**

21 **FRAUD - TELECOMMUNICATION SERVICE PROVIDERS**

22 194A.

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (2) "MANUFACTURE" OR "ASSEMBLE", WITH RESPECT TO AN UNLAWFUL
26 ACCESS DEVICE, MEANS:

1 (I) TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL ACCESS
2 DEVICE;

3 (II) TO MODIFY, ALTER, PROGRAM, OR REPROGRAM AN
4 INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE, SO
5 THAT IT IS CAPABLE OF DEFEATING OR CIRCUMVENTING TECHNOLOGY, SOFTWARE,
6 OR A DEVICE THAT IS USED BY THE PROVIDER, OWNER, OR LICENSEE OF A
7 TELECOMMUNICATION SERVICE OR OF A DATA, AUDIO, OR VIDEO PROGRAM OR
8 TRANSMISSION, TO PROTECT THE TELECOMMUNICATION, DATA, AUDIO, OR VIDEO
9 SERVICE, PROGRAM, OR TRANSMISSION FROM UNAUTHORIZED RECEIPT,
10 ACQUISITION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION,
11 TRANSMISSION, OR RETRANSMISSION; OR

12 (III) KNOWINGLY TO ASSIST OTHERS IN THOSE ACTIVITIES.

13 (3) "MANUFACTURE" OR "ASSEMBLE", WITH RESPECT TO AN UNLAWFUL
14 TELECOMMUNICATION DEVICE, MEANS:

15 (I) TO MAKE, PRODUCE, OR ASSEMBLE AN UNLAWFUL
16 TELECOMMUNICATION DEVICE;

17 (II) TO MODIFY, ALTER, PROGRAM, OR REPROGRAM A
18 TELECOMMUNICATION DEVICE TO BE CAPABLE OF ACQUIRING, DISRUPTING,
19 RECEIVING, TRANSMITTING, DECRYPTING, OR FACILITATING THE ACQUISITION,
20 DISRUPTION, RECEIPT, TRANSMISSION, OR DECRYPTION OF A TELECOMMUNICATION
21 SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE
22 TELECOMMUNICATION SERVICE PROVIDER; OR

23 (III) KNOWINGLY TO ASSIST OTHERS IN THOSE ACTIVITIES.

24 (4) "TELECOMMUNICATION DEVICE" MEANS:

25 (I) AN INSTRUMENT, DEVICE, MACHINE, EQUIPMENT,
26 TECHNOLOGY, OR SOFTWARE WHICH IS CAPABLE OF TRANSMITTING, ACQUIRING,
27 DECRYPTING, OR RECEIVING ANY TELEPHONIC, ELECTRONIC, DATA, INTERNET
28 ACCESS, AUDIO, VIDEO, MICROWAVE OR RADIO TRANSMISSIONS, SIGNALS,
29 COMMUNICATIONS, OR SERVICES, INCLUDING THE RECEIPT, ACQUISITION,
30 TRANSMISSION, OR DECRYPTION OF THOSE COMMUNICATIONS, TRANSMISSIONS,
31 SIGNALS, OR SERVICES PROVIDED BY OR THROUGH ANY CABLE TELEVISION, FIBER
32 OPTIC, TELEPHONE, SATELLITE, MICROWAVE, DATA TRANSMISSION, RADIO,
33 INTERNET-BASED, OR WIRELESS DISTRIBUTION NETWORK, SYSTEM, OR FACILITY;
34 OR

35 (II) A PART, ACCESSORY, OR COMPONENT OF AN ITEM LISTED IN
36 SUBPARAGRAPH (I) OF THIS PARAGRAPH, INCLUDING A COMPUTER CIRCUIT,
37 SECURITY MODULE, SMART CARD, SOFTWARE, COMPUTER CHIP, ELECTRONIC
38 MECHANISM, OR OTHER COMPONENT, ACCESSORY, OR PART OF ANY
39 TELECOMMUNICATION DEVICE THAT IS CAPABLE OF FACILITATING THE
40 TRANSMISSION, DECRYPTION, ACQUISITION, OR RECEPTION OF ANY OF THOSE
41 COMMUNICATIONS, TRANSMISSIONS, SIGNALS, OR SERVICES.

(5) "TELECOMMUNICATION SERVICE" MEANS:

(I) SERVICE PROVIDED FOR A CHARGE OR COMPENSATION TO FACILITATE THE ORIGINATION, TRANSMISSION, EMISSION, OR RECEPTION OF SIGNS, SIGNALS, DATA, WRITINGS, IMAGES, AND SOUNDS OR INTELLIGENCE OF ANY NATURE BY TELEPHONE, INCLUDING CELLULAR TELEPHONES, WIRE, WIRELESS, RADIO, ELECTROMAGNETIC, PHOTOELECTRONIC, OR PHOTO-OPTICAL SYSTEMS;

(II) SERVICE PROVIDED BY ANY RADIO, TELEPHONE, FIBER OPTIC, CABLE TELEVISION, SATELLITE, MICROWAVE, DATA TRANSMISSION, WIRELESS, OR INTERNET-BASED DISTRIBUTION SYSTEM, NETWORK, FACILITY, OR TECHNOLOGY, INCLUDING ELECTRONIC, DATA, VIDEO, AUDIO, INTERNET ACCESS, TELEPHONIC, MICROWAVE AND RADIO COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND SERVICES; AND

(III) THOSE COMMUNICATIONS, TRANSMISSIONS, SIGNALS, AND SERVICES PROVIDED DIRECTLY OR INDIRECTLY, BY OR THROUGH, A SYSTEM, NETWORK, FACILITY, OR TECHNOLOGY LISTED IN THIS PARAGRAPH.

(6) (I) "TELECOMMUNICATION SERVICE PROVIDER" MEANS A PERSON THAT:

1. PROVIDES A TELECOMMUNICATION SERVICE, EITHER DIRECTLY, OR INDIRECTLY AS A RESELLER; OR

2. OWNS, OPERATES, OR PROVIDES A TELECOMMUNICATION SERVICE DIRECTLY OR INDIRECTLY USING A FIBER OPTIC, CABLE TELEVISION, SATELLITE, INTERNET-BASED, TELEPHONE, WIRELESS, MICROWAVE, DATA TRANSMISSION, OR RADIO DISTRIBUTION SYSTEM, NETWORK, OR FACILITY.

(II) "TELECOMMUNICATION SERVICE PROVIDER" INCLUDES A CELLULAR, PAGING, OR OTHER WIRELESS COMMUNICATIONS COMPANY OR OTHER PERSON THAT, FOR A FEE, SUPPLIES THE FACILITY, CELL SITE, MOBILE TELEPHONE SWITCHING OFFICE, OR OTHER EQUIPMENT OR TELECOMMUNICATION SERVICE.

(7) "UNLAWFUL ACCESS DEVICE" MEANS AN INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE WHICH IS PRIMARILY DESIGNED, ASSEMBLED, MANUFACTURED, SOLD, DISTRIBUTED, POSSESSED, USED, OFFERED, PROMOTED, OR ADVERTISED FOR THE PURPOSE OF DEFEATING OR CIRCUMVENTING TECHNOLOGY, SOFTWARE, OR A DEVICE, OR A COMPONENT OR PART OF ANY OF THEM USED BY THE PROVIDER, OWNER, OR LICENSEE OF ANY TELECOMMUNICATION SERVICE OR OF A DATA, AUDIO, OR VIDEO PROGRAM OR TRANSMISSION, TO PROTECT THE TELECOMMUNICATION, DATA, AUDIO, OR VIDEO SERVICE, PROGRAM, OR TRANSMISSION FROM UNAUTHORIZED RECEIPT, ACQUISITION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION, TRANSMISSION, OR RETRANSMISSION.

(8) (I) "UNLAWFUL TELECOMMUNICATION DEVICE" MEANS:

1 1. AN ELECTRONIC SERIAL NUMBER, MOBILE
2 IDENTIFICATION NUMBER, PERSONAL IDENTIFICATION NUMBER, OR A
3 TELECOMMUNICATION DEVICE THAT IS CAPABLE OF ACQUIRING OR FACILITATING
4 THE ACQUISITION OF A TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS
5 CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATION SERVICE
6 PROVIDER, OR THAT HAS BEEN ALTERED, MODIFIED, PROGRAMMED, OR
7 REPROGRAMMED, ALONE OR IN CONJUNCTION WITH ANOTHER
8 TELECOMMUNICATION DEVICE OR OTHER EQUIPMENT, TO SO ACQUIRE OR
9 FACILITATE THE UNAUTHORIZED ACQUISITION OF A TELECOMMUNICATION
10 SERVICE;

11 2. A TELEPHONE ALTERED TO OBTAIN SERVICE WITHOUT
12 THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE
13 TELECOMMUNICATION SERVICE PROVIDER, TUMBLER PHONE, COUNTERFEIT OR
14 CLONE PHONE, TUMBLER MICROCHIP, COUNTERFEIT OR CLONE MICROCHIP, OR
15 OTHER INSTRUMENT CAPABLE OF DISGUIISING ITS IDENTITY OR LOCATION, OR OF
16 GAINING UNAUTHORIZED ACCESS TO A COMMUNICATIONS SYSTEM OPERATED BY A
17 TELECOMMUNICATION SERVICE PROVIDER; OR

18 3. A TELECOMMUNICATION DEVICE THAT IS CAPABLE OF,
19 OR HAS BEEN ALTERED, DESIGNED, MODIFIED, PROGRAMMED, OR REPROGRAMMED,
20 ALONE OR IN CONJUNCTION WITH ANOTHER TELECOMMUNICATION DEVICE, SO AS
21 TO BE CAPABLE OF, FACILITATING THE DISRUPTION, ACQUISITION, RECEIPT,
22 TRANSMISSION, OR DECRYPTION OF A TELECOMMUNICATION SERVICE WITHOUT
23 THE EXPRESS CONSENT OR EXPRESS AUTHORIZATION OF THE
24 TELECOMMUNICATION SERVICE PROVIDER.

25 (II) "UNLAWFUL TELECOMMUNICATION DEVICE" INCLUDES A
26 DEVICE, TECHNOLOGY, PRODUCT, SERVICE, EQUIPMENT, OR COMPUTER SOFTWARE,
27 COMPONENT, OR PART, PRIMARILY DISTRIBUTED, SOLD, DESIGNED, ASSEMBLED,
28 MANUFACTURED, MODIFIED, PROGRAMMED, REPROGRAMMED, OR USED TO
29 PROVIDE THE UNAUTHORIZED RECEIPT OF, TRANSMISSION OF, DISRUPTION OF,
30 DECRYPTION OF, ACCESS TO, OR ACQUISITION OF A TELECOMMUNICATION SERVICE
31 PROVIDED BY A TELECOMMUNICATION SERVICE PROVIDER.

32 (B) THIS SECTION DOES NOT APPLY TO:

33 (1) A LAW ENFORCEMENT OFFICER WHO POSSESSES OR USES A
34 TELECOMMUNICATION ACCESS DEVICE IN THE COURSE OF AN OFFICIAL POLICE
35 INVESTIGATION;

36 (2) A TELECOMMUNICATION SERVICE PROVIDER WHILE LAWFULLY
37 ACTING IN THAT CAPACITY ; OR

38 (3) A PERSON WHO IS EXPRESSLY AUTHORIZED BY A LAW
39 ENFORCEMENT AGENCY OR OTHER LAWFUL AUTHORITY TO:

40 (I) MANUFACTURE TELECOMMUNICATION ACCESS DEVICES FOR
41 DISTRIBUTION OR SALE TO A LAW ENFORCEMENT AGENCY; OR

1 (II) DISTRIBUTE OR SELL TELECOMMUNICATIONS DEVICES TO A
2 LAW ENFORCEMENT AGENCY.

3 (C) A PERSON MAY NOT KNOWINGLY:

4 (1) POSSESS, USE, MANUFACTURE, DISTRIBUTE, TRANSFER, SELL,
5 OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION, AN UNLAWFUL
6 TELECOMMUNICATION DEVICE OR MODIFY, ALTER, PROGRAM, OR REPROGRAM A
7 TELECOMMUNICATION DEVICE:

8 (I) FOR THE COMMISSION OF A THEFT OF TELECOMMUNICATION
9 SERVICE OR TO RECEIVE, DISRUPT, TRANSMIT, DECRYPT, ACQUIRE, OR FACILITATE
10 THE RECEIPT, DISRUPTION, TRANSMISSION, DECRYPTION, OR ACQUISITION OF A
11 TELECOMMUNICATION SERVICE WITHOUT THE EXPRESS CONSENT OR EXPRESS
12 AUTHORIZATION OF THE TELECOMMUNICATION SERVICE PROVIDER; OR

13 (II) TO CONCEAL OR TO ASSIST ANOTHER TO CONCEAL FROM A
14 TELECOMMUNICATION SERVICE PROVIDER, OR FROM A LAWFUL AUTHORITY, THE
15 EXISTENCE, PLACE OF ORIGIN, OR DESTINATION OF A TELECOMMUNICATION;

16 (2) POSSESS, USE, MANUFACTURE, ASSEMBLE, DISTRIBUTE, TRANSFER,
17 SELL, OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION ANY
18 UNLAWFUL ACCESS DEVICE; OR

19 (3) POSSESS, USE, PREPARE, DISTRIBUTE, SELL, GIVE, TRANSFER,
20 OFFER, PROMOTE, OR ADVERTISE FOR SALE, USE, OR DISTRIBUTION:

21 (I) A PLAN OR INSTRUCTION FOR MAKING OR ASSEMBLING AN
22 UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE OR AN UNLAWFUL ACCESS
23 DEVICE UNDER CIRCUMSTANCES EVIDENCING AN INTENT TO USE OR EMPLOY THE
24 UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE, OR TO ALLOW THE
25 UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE TO BE USED FOR A PURPOSE
26 PROHIBITED BY THIS SECTION, OR KNOWING OR HAVING REASON TO BELIEVE THAT
27 THE UNLAWFUL TELECOMMUNICATION DEVICE IS INTENDED TO BE SO USED, OR
28 THAT THE PLAN OR INSTRUCTION IS INTENDED TO BE USED FOR MANUFACTURING
29 OR ASSEMBLING THE UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE; OR

30 (II) MATERIAL, INCLUDING HARDWARE, CABLES, TOOLS, DATA,
31 COMPUTER SOFTWARE, OR OTHER INFORMATION OR EQUIPMENT, KNOWING THAT
32 THE PURCHASER OR A THIRD PERSON INTENDS TO USE THE MATERIAL TO
33 MANUFACTURE OR ASSEMBLE AN UNLAWFUL TELECOMMUNICATION OR ACCESS
34 DEVICE.

35 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS
36 SUBSECTION, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
37 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
38 EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$2,500 OR BOTH.

1 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY
2 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A
3 FINE NOT EXCEEDING \$10,000 OR BOTH IF:

4 (I) THE DEFENDANT HAS BEEN CONVICTED PREVIOUSLY UNDER
5 THIS SECTION OR CONVICTED OF ANY SIMILAR CRIME IN THIS OR ANY FEDERAL OR
6 OTHER STATE JURISDICTION; OR

7 (II) THE VIOLATION OF THIS SECTION INVOLVES AT LEAST 10, BUT
8 NOT MORE THAN 50, UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICES.

9 (3) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY
10 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A
11 FINE NOT EXCEEDING \$10,000 OR BOTH IF:

12 (I) THE DEFENDANT HAS BEEN CONVICTED PREVIOUSLY ON TWO
13 OR MORE OCCASIONS FOR CRIMES UNDER THIS SECTION OR FOR ANY SIMILAR
14 CRIME IN THIS OR ANY FEDERAL OR OTHER STATE JURISDICTION; OR

15 (II) THE VIOLATION OF THIS SECTION INVOLVES MORE THAN 50
16 UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICES.

17 (4) FOR PURPOSES OF GRADING AN OFFENSE BASED UPON A PRIOR
18 CONVICTION UNDER THIS SECTION OR FOR ANY SIMILAR CRIME UNDER
19 PARAGRAPHS (2)(I) AND (3)(I) OF THIS SUBSECTION, A PRIOR CONVICTION SHALL
20 CONSIST OF A CONVICTION ON A SEPARATE INDICTMENT OR CRIMINAL COMPLAINT
21 FOR A CRIME UNDER THIS SECTION OR ANY SIMILAR CRIME IN THIS OR ANY
22 FEDERAL OR OTHER STATE JURISDICTION, INCLUDING A CRIME INVOLVING THEFT
23 OF SERVICE OR FRAUD, AND A VIOLATION OF THE FEDERAL CABLE
24 COMMUNICATIONS POLICY ACT OF 1984 (PUBLIC LAW 98-549, 98 STAT. 2779).

25 (5) FOR PURPOSES OF ALL CRIMINAL PENALTIES OR FINES
26 ESTABLISHED FOR VIOLATIONS OF THIS SECTION, THE PROHIBITED ACTIVITY AS IT
27 APPLIES TO EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE IS A
28 SEPARATE VIOLATION.

29 (6) FOR PURPOSES OF IMPOSING FINES ON CONVICTION OF A
30 DEFENDANT FOR A CRIME UNDER THIS SECTION, ALL FINES SHALL BE IMPOSED FOR
31 EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE INVOLVED IN THE
32 VIOLATION.

33 (7) IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, THE
34 COURT SHALL REQUIRE A PERSON CONVICTED OF VIOLATING THIS SECTION TO
35 MAKE RESTITUTION IN ACCORDANCE WITH THE CRIMINAL PROCEDURE ARTICLE.

36 (8) ON CONVICTION OF A DEFENDANT UNDER THIS SECTION, THE
37 COURT MAY, IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED BY LAW, DIRECT
38 THAT THE DEFENDANT FORFEIT TO THE STATE ANY UNLAWFUL
39 TELECOMMUNICATION OR ACCESS DEVICES IN THE DEFENDANT'S POSSESSION OR

1 CONTROL WHICH WERE INVOLVED IN THE VIOLATION FOR WHICH THE DEFENDANT
2 WAS CONVICTED.

3 (E) (1) A CRIME UNDER THIS SECTION MAY BE CONSIDERED TO HAVE BEEN
4 COMMITTED AT EITHER THE PLACE WHERE THE DEFENDANT MANUFACTURES OR
5 ASSEMBLES AN UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE OR ASSISTS
6 OTHERS IN DOING SO, OR A PLACE WHERE THE UNLAWFUL TELECOMMUNICATION
7 OR ACCESS DEVICE IS SOLD OR DELIVERED TO A PURCHASER OR RECIPIENT.

8 (2) IT IS NOT A DEFENSE TO A VIOLATION OF THIS SECTION THAT SOME
9 OF THE ACTS CONSTITUTING THE VIOLATION OCCURRED OUTSIDE OF THIS STATE.

10 (F) (1) ANY PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION MAY
11 BRING A CIVIL ACTION IN ANY COURT OF COMPETENT JURISDICTION.

12 (2) THE COURT MAY:

13 (I) IMPOSE PRELIMINARY AND FINAL INJUNCTIONS TO PREVENT
14 OR RESTRAIN A VIOLATION OF THIS SECTION;

15 (II) AT ANY TIME WHILE AN ACTION IS PENDING, ORDER THE
16 IMPOUNDING, ON TERMS THE COURT CONSIDERS TO BE REASONABLE, OF ANY
17 UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE THAT IS IN THE CUSTODY OR
18 CONTROL OF THE VIOLATOR AND THAT THE COURT HAS REASONABLE CAUSE TO
19 BELIEVE WAS INVOLVED IN THE ALLEGED VIOLATION OF THIS SECTION;

20 (III) AWARD DAMAGES UNDER PARAGRAPH (3) OF THIS SUBSECTION;

21 (IV) IN ITS DISCRETION, AWARD TO AN AGGRIEVED PARTY WHO
22 PREVAILS REASONABLE ATTORNEY FEES AND COSTS, INCLUDING COSTS FOR
23 INVESTIGATION, TESTING, AND EXPERT WITNESS FEES; AND

24 (V) AS PART OF A FINAL JUDGMENT OR DECREE FINDING A
25 VIOLATION OF THIS SECTION, ORDER THE REMEDIAL MODIFICATION OR
26 DESTRUCTION OF ANY UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE
27 INVOLVED IN THE VIOLATION THAT IS IN THE CUSTODY OR CONTROL OF THE
28 VIOLATOR OR HAS BEEN IMPOUNDED UNDER SUBPARAGRAPH (II) OF THIS
29 PARAGRAPH.

30 (3) (I) DAMAGES AWARDED BY A COURT UNDER THIS SECTION SHALL
31 BE COMPUTED AS:

32 1. ON ELECTION BY THE COMPLAINING PARTY AT ANY TIME
33 BEFORE FINAL JUDGMENT IS ENTERED, ACTUAL DAMAGES SUFFERED BY THE
34 COMPLAINING PARTY AS A RESULT OF THE VIOLATION OF THIS SECTION AND ANY
35 PROFITS OF THE VIOLATOR THAT ARE ATTRIBUTABLE TO THE VIOLATION AND ARE
36 NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES; OR

1 2. ON ELECTION BY THE COMPLAINING PARTY AT ANY TIME
2 BEFORE FINAL JUDGMENT IS ENTERED, AN AWARD OF STATUTORY DAMAGES
3 DETERMINED BY THE COURT, NOT THE JURY, AS THE COURT CONSIDERS JUST, OF:

4 A. NOT LESS THAN \$250 AND NOT EXCEEDING \$10,000 FOR
5 EACH UNLAWFUL TELECOMMUNICATION OR ACCESS DEVICE INVOLVED IN THE
6 ACTION; OR

7 B. IN A CASE OF A WILLFUL VIOLATION OF THIS SECTION
8 COMMITTED FOR PURPOSES OF COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL
9 GAIN, NOT LESS THAN \$250 AND NOT EXCEEDING \$60,000 FOR EACH UNLAWFUL
10 TELECOMMUNICATION OR ACCESS DEVICE INVOLVED IN THE ACTION.

11 (II) IN DETERMINING THE PROFITS OF THE VIOLATOR UNDER
12 SUBPARAGRAPH (D)1 OF THIS PARAGRAPH:

13 1. THE COMPLAINING PARTY MUST PROVE ONLY THE
14 VIOLATOR'S GROSS REVENUE; AND

15 2. THE VIOLATOR MUST PROVE THE DEDUCTIBLE EXPENSES
16 AND ELEMENTS OF PROFIT ATTRIBUTABLE TO FACTORS OTHER THAN THE
17 VIOLATION.

18 (4) FOR THE PURPOSE OF ALL CIVIL REMEDIES ESTABLISHED FOR A
19 VIOLATION OF THIS SECTION, THE ACTIVITY PROHIBITED BY THIS SECTION APPLIES
20 TO EACH UNLAWFUL TELECOMMUNICATION DEVICE OR UNLAWFUL ACCESS DEVICE,
21 AND EACH DEVICE SHALL BE CONSIDERED A SEPARATE VIOLATION.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2001.